for its sale. If spoken words may have that meaning so may also written, for ordinarily language acquires no new or different meaning by being reduced to writing. Hence the words 'exclusive sale' may be construed to be an inhibition upon the owner to grant to any one else the power to sell rather than an inhibition upon his own right to sell. We so construe them, for in order to negative the latter's right, as before stated, clear and unequivocal language to that effect must be employed.

"It is said in some of the cases that there is a difference between an exclusive agency and an exclusive sale, but in all the cases called to our attention such statement is made arguendo in construing contracts of agency, or of exclusive agency. Such are the following: Armstrong *v.* Wann, 29 Minn. 126, 12 N. W. 345; Putnam *v.* How, 39 Minn. 363, 40 N. W. 258; Dole *v.* Sherwood, 41 Minn. 535, 43 N. W. 569; Golden Gate Packing Co. *v.* Farmers' Union, 55 Cal. 606; Ingold *v.* Symonds, 125 Iowa 82, 99 N. W. 713. In the latter case a contract giving a broker 'exclusive authority to procure a purchaser' within a definite time was construed not to prevent the owner from selling. The court said:

'The right of an owner to sell his own property is an implied condition of every contract of agency, and, unless expressly negatived, will prevail.'

"We have been unable to find a case where the precise question here presented has been decided. The nearest one is that of Fairchild *v.* Rogers, 32 Minn. 269, 20 N. W. 191, where a broker paid the owner $250 cash for the exclusive right to sell a certain piece of real estate for 60 days upon agreed terms. The court held that the owner could not sell within that time. The contract was oral, is not set out in the report of the case, and the question of its breach is not specifically treated. In view of the consideration paid by the broker for the contract, it was, no doubt, correctly construed. But where, as here, no consideration is paid for the contract and no obligation incurred by the broker to do anything, we deem the construction reached by us to be the more equitable and reasonable."

Physicians and Surgeons—Liability for Negligence in Care of Infectious Diseases.—In Skillings *v.* Allen, 173 N. W. 663, the Supreme Court of Minnesota held that a complaint states a cause of action when it is alleged therein that defendant, a physician, was employed by plaintiff to attend his minor daughter professionally while she was sick; that, knowing that the child's disease was scarlet fever, he negligently advised plaintiff's wife, who inquired in his behalf as well as in her own, that it was safe to visit the child, then in a hospital and under defendant's care; that he also advised her that it was safe to remove the child from the hospital to plaintiff's home, and that there was no danger that the disease would be communicated, although it

was then at a stage when great danger of infection existed, and that plaintiff and his wife did not know of the infectious nature of the disease and relied on defendant's advice, and accordingly visited their child at the hospital and removed her to their home, and plaintiff thereby contracted scarlet fever to his damage.

The court said: "The case is a novel one. Counsel for defendant assert that none like it has heretofore been presented to any court so far as they have been able to ascertain. They contend that a cause of action is not stated because there were no contractual relations between plaintiff and defendant. The statement in the complaint, that the child was under defendant's care 'pursuant to solicitation and employment by plaintiff and his wife,' amounts, we think, to an allegation that there were such relations. True, the child was defendant's patient, but can it be said that therefore he owed no contractual duty to her parents by whom he was employed? The child would have a cause of action against defendant for the consequences of any failure on his part to treat her with ordinary professional skill and care, though she did not employ him. Plaintiff might also have a cause of action entirely separate and apart from that of his child for the loss of her services, due to the same failure to exercise ordinary professional care which gave rise to the child's cause of action. 21 R. C. L. 398.

"Generally speaking, one is responsible for the direct consequences of his negligent acts whenever he is placed in such a position with regard to another that it is obvious that if he does not use due care in his own conduct he will cause injury to that person. Depue *v.* Flatau, 100 Minn. 299, 111 N. W. 1, 8 L. R. A. (N. S.), 485. It was remarked in Farrell *v.* M. & R. R. Ry. Co., 121 Minn. 357, 361, 141 N. W. 491, 492 (45 L. R. A. [N. S.], 215), that:

'It is now generally recognized that each member of society owes a legal duty, as well as a moral obligation, to his fellows.'

"Assuredly this is a case where there is every reason to hold that defendant was under a legal duty to plaintiff, and it is of little practical consequence whether we call the duty contractual or noncontractual. The health of the people is an economic asset. The law recognizes its preservation as a matter of importance to the state. To the individual nothing is more valuable than health. The laws of this state have been framed to protect the people, collectively and individually, from the spread of communicable diseases. Scarlet fever is classed as such a disease. The state board of health is charged with the duty of prescribing regulations for the disinfection and quarantine of persons and places as an incident in the treatment of all infectious diseases, and physicians are required to report all infectious cases to their local boards of health. Chapter 345, G. L. Minn. 1917 (Gen. St. Supp. 1917, § 4640). When defendant discovered that plaintiff's child was suffering from an infectious disease,

it became his duty to comply with the laws of the state in the particulars mentioned in order that the public health might be protected. His duty did not stop there. The child's parents were naturally exposed to infection to a greater degree than any one else. To advise them that they ran no risk in visiting her at the hospital or in taking her into their home necessarily exposed them to danger if they acted on the advice, and defendant was bound to know that they would be likely to follow his advice. It is alleged that the advice was given negligently, and all the necessary elements of a cause of action based on negligence are present. The following cases, in one respect or another, bear on the questions mooted here: Peterson *v.* Phelps, 123 Minn. 319, 143 N. W. 793, Ann. Cas. 1915A, 257, holding that a physician's responsibility to use due care is not dependent on an express agreement of employment or promise to pay for his services. Harriott *v.* Plimpton, 166 Mass. 585, 44 N. E. 992, holding that there may be liability for negligence where the purpose of an examination made by a physician was not medical treatment but information. Hewett *v.* Woman's Hospital, 73 N. H. 556, 64 Atl. 190, 111 Am. St. Rep. 607, holding that a hospital association was liable to a student nurse for putting her in charge of a diphtheria patient without warning her of the danger of contagion, she having contracted the disease through failure to take proper precautions to guard against infection. Piper *v.* Menifee, 12 B. Mon. (Ky.) 465, 54 Am. Dec. 547, holding that a physician was liable for communicating smallpox to a patient when he was attending several persons who had the disease and advised plaintiff that there was no danger of his contracting it because he changed his clothes after visiting smallpox patients, and so was allowed to continue to visit him as his physician. Missouri, etc., Ry. Co. *v.* Wood, 95 Tex. 223, 66 S. W. 449, 56 L. R. A. 592, 93 Am. St. Rep. 834, holding that a railway company was liable to plaintiff for negligently permitting one of its employees to escape from a detention hospital where he was undergoing treatment for smallpox at the hands of its physician. After escaping, he came in contact with plaintiff and his family and communicated the disease to them. Span *v.* Ely, 8 Hun. (N. Y.) 255, holding that a physician who employed a man to whitewash a house in which one of his patients had recently died of smallpox, assuring him that the house had been disinfected and that he would be safe in entering it, was liable to the man who contracted the disease while whitewashing the house. Edward *v.* Lamb, 69 N. H. 599 45 Atl. 480, 50 L. R. A. 160, holding that a physician was liable to a woman for negligently advising her that it was safe for her to assist in dressing an infectious wound her husband had received; she having acted on the advice and being infected."